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United States Court of Appeals
For the First Circuit

LOCAL NO. 149 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS (AFL),

PLAINTIFF, APPELLANT,

v.

GENERAL ELECTRIC COMPANY,

DEFENDANT, APPELLEE.

RECORD APPENDIX

TO

BRIEF FOR THE APPELLANT

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

I, JOHN A. CANAVAN, Clerk of the United States District Court, District of Massachusetts, do hereby certify that the following entries are on the CIVIL ACTION DOCKET, in the cause entitled:

Civil Action No. 56-652-S

LOCAL NO. 149 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS (AFL)

v.

GENERAL ELECTRIC COMPANY

1956

July	30	Petition to compel performance of contract to arbitrate, filed.
	31	SWEENEY, CH.J. Summons to show cause to issue.
	31	SWEENEY, CH.J. Summons to show cause issued; returnable Monday, August 13, 1956 at 1 p.m.
Aug.	6	Marshal's return of SSC, with service Aug. 2 (in hand to Robt. A. Burns, Mgr. Employee Relations), filed.
	21	Defendant's motion to dismiss filed.
Nov.	19	SWEENEY, CH.J. Motion to dismiss dismissed by agreement of counsel.
	27	SWEENEY, CH.J. Hearing on contract for arbitrability; taken under advisement.
	30	Brief for the respondent filed. Petitioner's memorandum of law filed.
	30	SWEENEY, CH.J. MEMORANDUM: ". . . the petition for an order to compel arbitration must be and is dismissed." Memo filed.
Dec.	3	SWEENEY, CH.J. Judgment, after hearing and in accordance with the memorandum handed down on Nov. 30, 1956, dismissing petition for an order to compel arbitration, with costs taxed at $

1956

Memo. filed. Copies mailed to counsel Dec. 3, 1956.

27 Notice of appeal filed by the plaintiff. Bond for costs on appeal filed. (New Amsterdam Casualty Co. as surety thereon).

1957

Jan. 4 Copy of the n/a mailed to Warren F. Farr, Esq., Ropes, Gray, Best, Coolidge & Rugg, 50 Federal St., Boston 10.

10 Original papers delivered to the U. S. Court of Appeals.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the aforesaid Court at Boston, said District this 17th day of July 1957.

JOHN A. CANAVAN
Clerk
BY: (s) DOROTHY C. CLARK
Deputy Clerk

[SEAL]

PETITION TO COMPEL PERFORMANCE OF CONTRACT TO ARBITRATE

1. The petitioner brings this action under the United States Arbitration Act, 9 U.S.C.A. Sec. 1, et. seq.; Title III, Section 301, Labor-Management Relations Act of 1947, 29 U.S.C.A. Sec. 185, et. seq., under which this Court has jurisdiction without respect to the amount in controversy or diversity of citizenship.

2. The petitioner, Local No. 149, of the American Federeration of Technical Engineers (AFL), (hereinafter referred to as "The Union"), is a labor organization, a voluntary unincorporated association having a principal office in the City of Lynn, Commonwealth of Massachusetts.

3. The respondent, General Electric Company, (herein-

after referred to as the "Company"), is a corporation organized and existing under the laws of the State of New York and having a place of business in the City of Lynn and the City of Everett, Commonwealth of Massachusetts.

4. The Company is an industry affecting commerce as defined in said Labor-Management Relations Act of 1947.

5. The Union is now engaged in and since 1951 has been engaged in representing employees of the Company at its River Works in Lynn and Everett, Massachusetts, in collective bargaining concerning wages, hours and other conditions of employment within the meaning of the Labor-Management Relations Act.

6. On or about November 1, 1955, the Union and the Company entered into a written collective bargaining agreement, (hereinafter referred to as the "Contract") which was to be effective and in force from August 15, 1955 to October 1, 1960. A true copy of the contract is attached hereto and marked "Exhibit A".

7. Article VII of the Contract provides in Exhibit "B" of said article as follows:

"*Job Rates and Progressive Step Rates*

Grade	8-15-55	9-15-56	9-15-57	9-15-58	9-15-59
14	$130.13	$134.03	$138.05	$142.85	$147.79
13	120.27	123.88	127.60	132.03	136.60
12	110.93	114.25	117.68	121.77	125.99
11	102.58	105.65	108.82	112.61	116.50
10	93.56	96.37	99.26	102.71	106.27
9	86.55	89.15	91.82	95.01	98.30
	79.78	82.17	84.63	87.58	90.61
	74.99	77.24	79.56	82.32	85.17
	70.92	73.04	75.23	77.85	80.54"

8. On or about November 7, 1955, the Union filed grievances with the Company alleging that the jobs performed

by employees, Paul Nolan, Fred Lang, Robert Tivey and Ashley Corporon were incorrectly graded. The Union alleged that under the grades established by the Company and set forth in Article VII of the contract, the duties performed by these employees came within Grade 13 and that the Company had not properly applied the contract in its payments to said employees.

9. These grievances were processed by the Union and the Company in accordance with the procedures set forth in Article XIV of the contract.

10. After the grievance procedure set forth in Article XIV of the contract had been exhausted, the Union on April 23, 1956 requested a meeting with the Company for the purpose of selecting an arbitrator and instituting arbitration proceedings pursuant to Article XV, Section 1, of the contract.

11. Article XV, Section 1, of the contract provides:

> "Any grievance which involves the interpretation or application of this Agreement, and which remains unsettled after having been fully processed pursuant to the provisions of Article XIV shall be submitted to arbitration upon request of either the Union or the Company provided such request is made within 90 days after the decision of the Company has been given to the Union pursuant to Article XIV. In each case, the arbitrator shall be selected and the arbitration proceeding conducted pursuant to procedures mutually satisfactory to the Company and the Union."

12. The Company on May 1, 1956 notified the Union that it would not submit said grievances to arbitration.

13. The Company has refused and continues to refuse to submit either the arbitrability of the grievances or the grievances themselves to arbitration.

14. The Company's refusal to arbitrate, as aforesaid,

was and is a violation and breach of the collective bargaining agreement between the Union and the Company.

Wherefore the petitioner prays that the respondent be specifically ordered to perform its agreement to arbitrate by submitting to arbitration the grievances involving Paul Nolan, Fred Lang, Robert Tivey and Ashley Corporon.

By its Attorney,

(s) ROBERT M. SEGAL
11 Beacon St., Boston
Rich 2-0208

EXHIBIT "A"

RIVER WORKS

AGREEMENT

BETWEEN

LOCAL NO. 149
OF THE AMERICAN FEDERATION
OF TECHNICAL ENGINEERS (AFL)

AND

GENERAL ELECTRIC COMPANY

1955 – 1960

GENERAL ELECTRIC

In full settlement of all issues which were or could have been the subject of collective bargaining between Local #149, AFTE (AFL) and the General Electric Company for its River Works Plants located in West Lynn and Everett, Massachusetts in 1955, the parties hereto have agreed upon a Settlement Agreement which includes:

PART ONE

1955 Wage Agreement

PART TWO

1955 Pension and Insurance Agreement

PART THREE

1955 G. E. - Local #149, AFTE (AFL) Agreement

PART FOUR

General Provisions applicable to this Settlement Agreement as a whole and to each part thereof

PARTS TWO and THREE are reproduced in this booklet.

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ARTICLE I

PURPOSE

1. This Agreement is entered into by and between the General Electric Company, hereinafter referred to as the "Company," and Local No. 149 American Federation of Technical Engineers (AFL), hereinafter referred to as the "Union." The parties hereto reserve the right to amend and supplement this Agreement by mutual consent.

2. In this Agreement, the parties have established an adequate procedure to facilitate the orderly adjustment of grievances which may arise and have entered into the agreements contained herein in an effort to establish harmonious relations between the Company and its employees, represented by the Union. This Agreement is entered into in consideration of the mutual performance thereof in good faith by the parties.

ARTICLE II

RECOGNITION

1. The Company agrees to recognize the Union as the sole collective bargaining agent for all planning, wage rate, methods, and time study employees who are included in the bargaining unit as determined by the National Labor Relations Board in Case No. 1-RM-120 for the purpose of collective bargaining with respect to rates of pay, hours of work and other conditions of employment.

2. The description of the unit is as follows:

"All planning, wage rate, methods and time study employees of the General Electric Company at its River Works Apparatus Department plants, 920 Western Avenue, Lynn, Massachusetts; 62 Tremont Street and 69 Norman Street, Everett, Massachusetts, excluding all other employees, guards and supervisors as defined in Section 2 (11) of the Act, as amended, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9 (b) of the Act, as amended."

ARTICLE III

CHECKOFF

1. The Company, for any employee covered by this Agreement, shall deduct from the first pay of each month his Union dues for the current month and promptly remit the same to the Financial Secretary of the Union, provided such employee has signed and caused to be delivered to the Company an authorization in the form mutually agreed to by the Company and the Union and set forth in Exhibit "A" attached.

Initiation fees of the Union shall be deducted by the Company in the same manner as dues if the employee has similarly authorized such deduction.

2. The Company shall deduct and remit to the Union all dues and initiation fees so authorized, less the cost thereof. Any contemplated change in cost will be discussed with the Union Grievance Committee before any change is made.

ARTICLE IV

WORKING CONDITIONS

1. The Company will continue to provide systematic safety inspections, safety devices, guards, and medical service to minimize accidents and health hazards on its premises.

ARTICLE V

DISCRIMINATION AND COERCION

1. There shall be no discrimination by supervisors or other agents of the Company against any employee because of the employee's membership in the Union or because the employee is acting as a representative of the Union.

2. The Union agrees that neither its officers nor its members, nor persons employed directly or indirectly by the Union will intimidate or coerce any employee; nor will such individuals engage in Union activities during working hours, except such activities as are necessary for the processing of grievances.

ARTICLE VI

HOURS OF WORK AND OVERTIME

1. The normal workweek shall be five (5) days, eight (8) consecutive hours per day, exclusive of the lunch period, Monday through Friday inclusive.

An employee's work day is the twenty-four (24) hour period beginning with his regularly assigned starting time of his workshift, and his

day of rest starts at the same time on the day or days he is not scheduled to work. His workweek starts with his regularly assigned work period on Monday.

2. An employee on a non-exempt job will be paid at the rate of one and one-half times his straight time pay for hours worked —

(a) In excess of eight (8) hours per work day,

(b) In excess of eight (8) hours per day in any continuous 24-hour period beginning with the starting time of his shift,

(c) On his Saturday.

An employee on a non-exempt job will be paid at two times his straight time rate for hours worked —

(a) On his Sunday,

(b) On his observed holiday,

(c) Outside his regularly scheduled shift on a calendar Sunday or calendar holiday.

(d) In excess of twelve (12) hours in the 24 hour period beginning with the start of the employee's shift; provided that an employee who has not been away from work eight hours or more after he shall have worked in excess of twelve (12) hours in any single such 24 hour period, and who shall be required to continue at work beyond the 24 hour period, shall continue to be paid at double time rate for hours worked until he shall have been away from work for eight consecutive hours.

In paying double time for hours worked on observed holidays, it is agreed that an employee working on observed holidays will receive straight time for hours worked plus straight time for the normal work schedule of eight (8) hours for the holiday.

3. An exempt salaried employee shall be paid at the rate of time and one-half for planned hours of work performed on the sixth day of his workweek. Such employee who performs planned work on observed holidays or on his Sunday, if Sunday is the 7th consecutive day worked in the week, shall be paid at the rate of double time. Planned overtime occurring within the workweek shall be paid at the applicable rate.

4. *Division of Overtime*

Overtime shall be divided as equally as proficient operations permit among the qualified employees who are performing similar work in a group.

The supervisor will keep a record of overtime, which record will be available to the steward to examine upon request.

5. *Shift Differential*

Employees assigned to recognized second and third shift operations shall have ten per cent (10%) added to their regularly determined earnings for all work performed on such shifts.

6. *Payment for Holidays Not Worked*

Employees coming under this Agreement will be paid for observed holidays not worked in accordance with established Company policy. The Union will be given a list of the observed holidays.

On payment of holidays, it is intended that the employees who do not work the holiday shall receive pay for the normal work schedule of eight (8) hours.

7. *Absence Payments*

Employees after one (1) year of continuous service, if absent for personal reasons other than vacations, may be allowed full pay, subject to the approval of the General Manager, or his delegated representative, for reasons and periods as follows:

Reason	Maximum Period in Any Twelve Month Period
Personal Illness	20 working days
Death of Immediate Relative	5 working days
Other Personal Reasons	5 working days

The foregoing provisions of this Section 7 are not to be considered as "entitling" an employee to be absent without loss of pay for such absences.

8. *Call-in Time*

Non-exempt employees who are called in outside of their regular schedule of hours will be paid at their overtime rate but will receive not less than the equivalent of four (4) hours' pay at their straight time rate.

9. Exempt salaried employees shall be paid double time for hours worked in excess of sixteen (16) hours in the 24-hour period beginning with the start of the employee's shift; provided that an employee, who has not been away from work eight hours or more after he shall have worked in excess of sixteen (16) hours in any single such twenty-four hour period, and who shall be required to continue at work beyond that twenty-four hour period, shall continue to be paid at double time

rate for hours worked until he shall have been away from work for eight consecutive hours.

ARTICLE VII

WAGE RATES

1. The Company and the Union, having negotiated concerning the question of wage rates, agree that any requests for a general adjustment of wage rates shall not be made the subject of collective bargaining prior to August 2, 1960.

2. Job classifications, job rates and step rates are as shown on Exhibit "B".

3. In general, the higher rated jobs within the bargaining unit will be filled by upgrading.

4. When an employee is hired or transferred through the Company Personnel Department and assigned to a job within the bargaining unit, he will be given a card showing his job classification, starting rate, job rate, and rate of progression, if any, applicable to the job for which he is hired or to which transferred. In addition, the employee's new supervisor will explain the general scope of his duties and responsibilities on the new job. Similarly, the employee will be given such information when re-assigned to another job within the bargaining unit.

5. (a) Rates paid will be on steps.* Job rates will be designated by grade.

*Except in the case of employees transferring into the bargaining unit from hourly rated jobs whose initial salaries are approximately 40 times their straight time hourly rate. Therefore, many of such transferees will have off-step salaries at the time they enter the bargaining unit.

(b) The minimum starting rate for an inexperienced employee will be three steps below the Grade 9 job rate.

(c) Employees will progress on steps, from the starting rate to the Grade 9 job rate, as follows:

6 months after hiring—increase one step

After each additional 6 months—increase one step

(d) An employee who is receiving the Grade 9 job rate and is assigned to a Grade 11 job, or higher, will be given a one step increase at the end of 6 months dating from assignment to such Grade 11 or higher job.

(e) Any further increase in rate, up to the job rate for his job, shall be based solely on the employee's performance on the job.

(f) Subject to the foregoing provisions of this Section 5, the job rate shall be paid for normal performance.

* EXHIBIT "B"

Job Rates and Progressive Step Rates

Grade	8-15-55	9-15-56	9-15-57	9-15-58	9-15-59
14	$130.13	$134.03	$138.05	$142.85	$147.79
13	120.27	123.88	127.60	132.03	136.60
12	110.93	114.25	117.68	121.77	125.99
11	102.58	105.65	108.82	112.61	116.50
10	93.56	96.37	99.26	102.71	106.27
9	86.55	89.15	91.82	95.01	98.30
	79.78	82.17	84.63	87.58	90.61
	74.99	77.24	79.56	82.32	85.17
	70.92	73.04	75.23	77.85	80.54

*The above rates are subject to increase on a cost-of-living basis.

ARTICLE VIII

LEAVE OF ABSENCE FOR UNION ACTIVITY

1. An employee with at least one year of continuous service selected to act as a representative of the Union with reference to labor relations with the Company shall, on request of the Union, be granted one year's leave of absence for such activity. Upon request of the Union, this may be extended yearly for four additional years; provided, however, that no such representative shall be entitled to leaves of absence whose aggregate time exceeds five years.
2. By mutual agreement, an employee with at least one (1) year of continuous service assigned by the Union to other duties will be given a leave of absence.
3. Continuity of service will not be lost, but the employee shall not receive service credits for the time elapsed during such leaves of absence.
4. At the end of such leave, the employee will be given re-employment to his former position or similar position at the going rate at the time of his return if entitled thereto on the basis of his prior accumulated seniority.
5. Not more than three employees shall have such leave at any one time.

ARTICLE IX

CONTINUITY OF SERVICE — SERVICE CREDITS

1. *Definition of Terms*:
   (a) "Continuity of Service" designates the status of an employee who has service credits totaling 52 or more weeks.

(b) "Continuous service" designates the length of each employee's continuity of service and shall equal the total service credits of an employee who has "continuity of service".

(c) "Service credits" are credits for periods during which the employee is actually at work for the Company or for periods of absence for which credit is granted (as provided in Section 3).

(d) "Absence" is the period an employee is absent from work either with or without pay (except a paid vacation period), computed by subtracting the date following the last day worked from the date the employee returns to work. Each separate continuous period away from work shall be treated as a single absence from work.

(e) "Illness" shall include pregnancy, whenever the foreman or other immediate supervisor is notified prior to absence from work.

2. *Loss of Service Credits and Continuity of Service.*

Service credits previously accumulated and continuity of service, if any, will be lost whenever the employee:

(a) Quits, resigns or is discharged.

(b) Is absent from work for more than two consecutive weeks without satisfactory explanation.

(c) Is absent from work because of personal illness or accident and fails to keep his

supervisor notified monthly stating, if possible, the probable date of his return to work. This obligation to notify the supervisor will be waived in cases of pregnancy until eight (8) weeks after termination of pregnancy.

(d) Is notified within a year from date of layoff that he may return but fails to return or to give satisfactory explanation within two weeks.

(e) Is absent from work without satisfactory explanation beyond the period of any leave of absence granted him by the Company.

(f) Is absent from work for a continuous period of more than one year for any reason other than a leave of absence granted in advance.

The service record of each employee laid off and re-employed after layoff will be reviewed by the Company at the time of his re-employment and, in each case, such employee will be notified as to his service credits and continuity of service, if any. If the Company re-employs an employee who has lost service credits and continuity of service because of layoff due to lack of work for more than one year, such employee shall have such service credits and continuity of service automatically restored, if such layoff did not exceed three years and if his continuous service at the time of his layoff was greater than the total length of such layoff.

Individuals who at the time of layoff had more than five (5), but less than ten (10), years of

continuous service shall, despite loss of service, be retained on the recall list and eligible for re-employment in accordance with the recall procedure for a period of 18 months following layoff, or in the case of individuals with ten (10) or more years of continuous service at the time of layoff, for a period of 24 months.

3. *Service Credits*

Service credits for each employee shall be granted for periods during which the employee is actually at work for the Company and for absences as follows:

(a) Employees without continuity of service who lose time due to a compensable accident will receive service credits for such lost time up to a maximum of three months. For all other absences of two weeks or less, such employees will receive service credits, but, if absent more than two weeks, no service credits will be allowed for any part of such absence.

(b) Employees with continuity of service, if absent on account of illness, accident, or layoff, will receive service credits for any absence of six months or less. Where any such absence exceeds six months, no service credit will be allowed for the excess time. However, where the absence of such an employee is due to a compensable accident, and where the employee is re-employed without loss of continuity of service, service credits will be restored for the period of his absence in excess of six months up to a maximum of six additional months. For all other absences of

two weeks or less, such employees will receive service credits, but, if the absence is longer than two weeks, no service credits will be allowed for any part of such absences.

If an employee who has lost prior service credits or continuity of service is re-employed, he shall be considered a new employee and will not receive service credits for any time prior to the date of such re-employment, unless all or part of prior service credits are restored as a result of a review. Should the result of the review be unsatisfactory to the employee, it may be taken up under the Grievance Procedure.

ARTICLE X

VACATIONS

A. Service Requirements

Eligible employees will be granted vacations with pay in each calendar year (hereinafter called "the vacation year") as follows:

Years of Continuous Service	Vacation
1	2 weeks
11	2 weeks, 1 day*
12	2 weeks, 2 days*
13	2 weeks, 3 days*
14	2 weeks, 4 days*
15	3 weeks

B. Eligibility Requirements

(1) The vacation in each calendar year after the calendar year 1954 to which an employee

*Effective January 1, 1956

shall be entitled under the preceding provisions of this Article shall be equal to the total of:

(a) the vacation to which his continuous service as of December 31 of the year immediately preceding the vacation year entitles him, and

(b) any additional vacation to which his continued accumulation of continuous service shall entitle him during the vacation year, provided that an employee shall not be entitled to any additional vacation in the vacation year unless he shall actually perform work as an active employee of the Company after having qualified for such additional vacation during such vacation year.

(2) An employee shall qualify for a vacation or vacation allowance under the provisions of this Article if he shall (a) have actually performed work as an active employee of the Company during the last full calendar week of the year immediately preceding the vacation year, or (b) have received earnings from the Company directly applicable to all or part of such week. However, an employee who shall not have fulfilled either of the requirements set forth in (a) and (b) above, and who returns to work without loss of continuity of service during the vacation year, will become entitled to a vacation or vacation allowance in the vacation year after he shall have worked in the vacation year a period of one month or a period equal to the period of his absence if the period of his absence was less than one month. Any such employee re-employed too

late to work a period of one month in the vacation year will be paid his vacation allowance and may have a portion of the time out considered as the vacation to which he is otherwise eligible.

C. Holiday in Vacation Period

When the vacation period of an employee includes an observed holiday, an additional day of vacation will be granted with pay, if the holiday occurs during the scheduled workweek of the employee. The extra day must be taken immediately before or after as an extension of the vacation.

D. Absences

When an employee is granted a leave of absence, he may have the first portion of such leave designated as the period of any vacation to which he may then be entitled, if the Manager shall approve.

An employee who quits, is discharged, dies or retires will promptly thereafter receive the full vacation allowance to which he may then be entitled. In the case of employees who die, vacation allowances will be treated as wages owing the employee, and payment made accordingly. An employee who is absent because of sickness or accident, or because he is laid off for lack of work, may (except in a plant or part thereof which is scheduled for a vacation shutdown) have the first portion of such absence designated as the period of any vacation to which he may then be entitled, if the Manager shall approve. An employee who is absent from work for any reason other than those reasons listed above in this

paragraph will not be entitled either to have his vacation scheduled or to receive a vacation allowance during the period of such absence.

Where an employee's absence from work continues beyond the end of a vacation year and the employee did not receive in such vacation year the full vacation pay for which he had qualified, the employee shall receive, at the end of such absence or upon prior termination of service, a vacation allowance in lieu of any vacation to which he was still entitled at the end of the vacation year.

E. Basis of Payment

1. Vacations for all qualified employees will be paid at straight time rates on the basis of the standard working schedule of five days, forty hours per week, except as noted in Paragraphs 2 and 3.

2. Employees on special short shifts will receive a vacation allowance based on the greater of (a) his actual scheduled salary per week at the time the vacation begins, or (b) his actual scheduled salary per week during the last fiscal week worked by him during the year preceding the vacation year.

3. Vacation payments to salaried employees working extended schedules will be as follows:

   (a) Employees working an average of more than forty hours during the four fiscal quarters ending with the last fiscal week (as determined by the G. E. fiscal

calendar) of the calendar year immediately preceding the vacation year will be paid on the following basis:

(1) If the average number of hours worked per week during the four fiscal quarters, as defined above, was more than forty hours but less than forty-two hours, payment will be made on the basis of 40 hours.

(2) If the average number of hours worked per week during the four fiscal quarters was 42 or more but less than 48, payment will be made for the nearest number of such average hours (i.e., if the average is 43.6 hours, payment will be made for 44 hours). If an employee is entitled to any additional days of vacation, payment for the additional days will be made at the rate of not more than eight hours per day.

(3) If the average number of hours worked per week during the four fiscal quarters was 48 hours or more, payment will be made for 48 hours.

(4) To qualify for more than 40 hours' pay, an employee must have worked an average of 42 or more hours. In other words, absences during the four fiscal quarters will reduce the vacation payment but not, of course, below the floor of 40 hours.

The number of hours included in last year's vacation allowance will be counted as hours worked.

(5) For purposes of paragraphs (1), (2), (3), and (4) above of this Section, time lost from work because of absence will be counted as though the time had been worked if the cause of such absence was:

(i) time spent on Union activity;
(ii) an observed holiday;
(iii) jury duty service;
(iv) attendance, pursuant to orders, at an Armed Services encampment or other Armed Services continuous training program, provided that no more than two weeks in a single calendar year shall be so credited as time worked; or
(v) salaried employees' personal absences for which pay is granted.

(b) All payments will be based upon straight time hourly earnings; i.e., no overtime premiums will be added for hours in excess of 40.

(c) Since the requirement that an average of at least 42 hours must be worked before extended schedules are recognized is intended to screen out occasional and casual overtime, the amount of vacation payment will be computed for each individual employee without regard to the amount or extent of overtime worked by other employees in the division or unit in which he is employed.

(d) An employee who takes his vacation prior to the date upon which he becomes

eligible, will receive payment upon qualifying on the basis of (a) his rate of pay at the time his vacation is taken and (b) the average weekly hours worked by him during said twelve-month period.

4. Employees who are on shift operation and working from 37½ to 40 hours per week will receive a vacation allowance based on a 40-hour week.

5. The amount of vacation allowance for employees will be determined by multiplying the appropriate number of hours by the greater of (a) the hourly equivalent of the employee's actual straight time salary at the time the vacation begins, or (b) the hourly equivalent of the employee's actual straight time salary during the last week worked by him during the year preceding the vacation year.

6. For determining vacation allowance payments, night shift differential for employees whose regular schedules are on those shifts will be included in average hourly earnings.

F. General Regulations

1. Those Departments shutting down annually for vacation purposes shall consider the vacation season to run concurrently with the shutdown period. Employees entitled to a third week of vacation will schedule this week immediately before or after the shutdown period. Other exceptions for certain departments or individuals by reason of the requirements of the

business shall be at the Manager's discretion.

As the practice of annual shutdown is applied in the several Departments which have not followed this practice previously, the Company will discuss the situation with the Union as far in advance as possible.

2. The vacation year shall begin on January 1 and end on December 31 of each year. Vacations outside of shutdowns will be scheduled to conform to the requirements of the business, and, except as herein otherwise provided, vacation allowances shall be paid to an employee on or about the last day worked by him prior to the beginning of the vacation scheduled for him. No vacation shall be divided unless it is of two weeks or more duration, in which case it may, with the consent of the Manager, be divided.

3. An additional week of vacation for which an employee may qualify later in the year may be taken at the time of the regular vacation and payment for such time will be made when the employee has qualified.

4. It will not be permissible to postpone vacations from one year to another, or to omit vacations and draw vacation pay allowances in lieu thereof, except with the written approval of the Manager.

ARTICLE XI

MILITARY PAY DIFFERENTIAL

Any employee with 52 or more weeks of service credits attending annual encampments of or training duty in the Armed Forces, State or National Guard or U. S. Reserves shall be granted a military pay differential for a period of up to two weeks annually. The employee shall be granted credited service for such two week period or portion thereof during which he is absent. Such military pay differential shall be the amount by which the employee's normal wages or salary, calculated on the basis of a workweek up to a maximum of 40 hours, which the employee has lost by virtue of such absence exceeds any pay received from the Federal or State Government. Such items as subsistence, rental and travel allowance shall not be included in determining pay received from the Government.

Employees who have less than 52 weeks of service credits may also be absent for the reason and period set forth above without deduction of service credits for such absence but shall not be eligible for the military pay differential.

Employees may be permitted, in the discretion of Management, to take a vacation and attend a military encampment at separate times and be granted both a vacation pay allowance and a military pay differential. However, an employee may not receive a vacation pay allowance and a military pay differential for the same period. An employee may, however, receive a military pay differential for the period, if any, by which the time spent in such encampment exceeds such vacation, but not exceeding the maximums specified above.

ARTICLE XII

JURY DUTY

When a salaried employee is called for service as a juror, he will continue to be paid his normal straight-time salary during the period of such service.

ARTICLE XIII

REPRESENTATION

1. The Company agrees that it will recognize the Shop Steward system as the preliminary agency for negotiating the settlement of grievances in regard to wages, hours or working conditions now existing or which may arise in the future.

2. Generally, there shall be one steward for each foreman or supervisor and his activities will be limited to the section which he represents. An alternate steward may be designated for each section who will act in the absence of the steward on his behalf.

3. The Company agrees to recognize the Grievance Committee as the agent or representatives for negotiating with Works Management. The Union may designate one member of the Grievance Committee as chairman, who will be free to contact any steward of the Union concerning grievances. The chairman will notify his supervisor before leaving his section and report to the supervisor in the section that he is visiting before contacting the steward and will report to his supervisor when he returns. No contacts will be made on Company property outside his normal

working shift without first receiving approval of the Works Manager or his designated representative.

4. Stewards and Grievance Committee members shall be bona fide employees of the Company.

5. The Union agrees to furnish the Company a list of the names of all stewards, Grievance Committee members and officers of the Union; and the Union agrees to promptly advise the Company of any changes in any such office or positions.

6. The Company will keep the Union advised promptly concerning the names of the supervisors who have supervision of employees within the bargaining unit.

7. *Payment for Time on Union Activities*

Employees on the active payroll of the Company will be paid at their respective rates then prevailing for absences from work while engaged in the following activities on Company premises:

(a) During each fiscal month, the number of weeks in such General Electric fiscal month multiplied by 1½ hours per week for those stewards whose names and sections have been furnished to the Company pursuant to the provisions of Paragraph 5 above, while engaged in processing grievances with supervisors pursuant to the provisions of Article XIV — (Grievance Procedure — Step One).

Where the Works is regularly scheduled on a forty-eight hour per week basis, the allowances, as provided in the previous sentence, will be based on two hours per week.

(b) Up to a total of eight (8) hours per week for each member of a local Grievance Committee

of five (5) while engaged in processing grievances with representatives of local Management pursuant to the provisions of Article XIV (Grievance Procedure — Step Two).

(c) Employees requesting payment pursuant to the provisions of 7 (a) and 7 (b) hereof shall report all time spent on the handling of grievances to their respective supervisors.

(d) Time spent within their regular schedule of hours by officers, stewards and Grievance Committee members on Union business which relates to collective bargaining between the Company and the Union will count as time worked.

8. *Layoff Exemption*

(a) Upon written request of the Union, an employee who is an officer of the Union, who has accumulated six months or more of service credits, shall be deferred from layoff from his job under the provisions of Article XVII so long as work for which he is qualified is available on such job. If such work is not available on his job, such an employee shall, to the extent necessary to defer him from layoff, be deemed to have sufficiently greater seniority than other employees in the bargaining unit to entitle him to transfer to equal or lower rated work in the unit for which he is qualified. This provision shall apply to a maximum of four such officers.

(b) Paragraph (a) hereof shall apply only to those officers whose names, titles and order of precedence have been furnished in writing to the Company prior to the giving of notice of layoff by the Company; and shall not apply to any such officers who are on leave of absence pursuant to the provisions of Article VIII of this Agreement.

ARTICLE XIV

GRIEVANCE PROCEDURE

1. Grievances may be filed by an employee or group of employees, a steward or the Union. Grievances of a general nature filed by the Union shall be initiated at the second step of the Grievance Procedure.

2. *Step One*

(a) *Presentation*

Grievances will be presented to the supervisor by an employee and his steward or by the steward. However, a grievance affecting an employee individually may be presented by the employee involved, if he so desires.

(b) *Answer*

In all cases the supervisor shall give his answer to the employee and his steward within one (1) working day after the presentation of the grievance or advise them that additional time is needed, in which event the supervisor shall give his answer within five (5) days after the presentation of the grievance.

3. *Step Two*

(a) If no satisfactory settlement is reached at Step One, within two (2) weeks after the supervisor's answer is given, the matter may be referred to representatives of local Management in a written statement of such grievance giving all pertinent information relative to the grievance and indicating the relief requested.

(b) Representatives designated by the Union shall meet with local Management within five (5) working days after referring such matter to Step Two to be discussed.

(c) In those cases where it is mutually agreed by Management and Union representatives that an inspection of the job would be helpful in settling the case, a subcommittee of the Union with Management representatives shall be allowed to make an inspection of the job.

(d) If local Management's reply to a dispute or grievance at Step Two is unsatisfactory, the Union may take the dispute or grievance to Step Three, in which case the Union will notify local Management.

4. *Step Three*

(a) If no satisfactory agreement is reached at Step Two, the dispute or grievance may be referred to Step Three, the final step of the Grievance Procedure, for the consideration of designated representatives of the Union and a representative of the Union Relations Services Department of the Company.

(b) The Union will submit such cases to the Company and a meeting will be held at a mutually satisfactory date at which time the grievance may be discussed. This meeting will take place not later than one month after the request for the meeting.

(c) The Company will give its final reply to the Union in not more than five (5) days after the initial discussion at Step Three.

These times may, however, be extended by mutual agreement.

(d) When the Union refers a dispute or grievance to Step Three, the Grievance Procedure shall be considered as fully exhausted only after the Union advises the Company that the Company's reply at Step Three is unsatisfactory.

5. *Written Replies*

On request, a written reply shall be given to a grievance submitted in writing at any step of the Grievance Procedure.

ARTICLE XV

ARBITRATION

1. Any grievance which involves the interpretation or application of this Agreement, and which remains unsettled after having been fully processed pursuant to the provisions of Article XIV shall be submitted to arbitration upon request of either the Union or the Company provided such request is made within 90 days after the decision of the Company has been given to the Union pursuant to Article XIV. In each case, the arbitrator shall be selected and the arbitration proceeding conducted pursuant to procedures mutually satisfactory to the Company and the Union.

2. The award of an arbitrator so selected upon any grievance so submitted to him shall be final and binding upon all parties to this Agreement. The arbitrator shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement. In addition, it is specifically agreed that no arbitrator shall have the authority

to establish a wage rate or job classification, or authority to enter an award pertaining to Article XIX, and that no provision of this Agreement or other agreements between the parties shall be subject to arbitration pertaining in any way to the establishment, administration, interpretation or application of Insurance or Pension Plans in which employees covered by this Agreement are eligible to participate.

ARTICLE XVI

STRIKES AND LOCKOUTS

1. The Union or their representatives will not cause or sanction their members to cause or take part in any strike, sit-down, stayin, or slowdown or other stoppage of work in connection with any grievance until all the bargaining steps mentioned in the Grievance Procedure shall have been employed without success or if the parties agree to arbitrate the matter.

2. The Company will not lock out any employee or transfer any job under dispute from the local Works nor will the local Management take similar action while a disputed job is under discussion at any of the steps of the Grievance Procedure as set forth in Article XIV, or if the parties agree to arbitrate the matter.

ARTICLE XVII

REDUCTION OF FORCES

1. (a) In all cases of layoff or transfer due to lack of work, seniority shall be the major factor determining the employees to be

laid off or transferred (exclusive of upgrading). However, ability will be given consideration.

(b) Similarly, in all cases of rehiring after layoff, such seniority shall be the major factor determining such rehiring if the employee is able to do the available work in a satisfactory manner after a minimum amount of training.

(c) The provisions of Sections 1 (a) and 1 (b) of this Article shall apply to employees who have six months or more of service credits.

2. The seniority of each employee in the bargaining unit shall be his relative position with respect to other employees in the bargaining unit.

(a) Seniority for each employee who was in the bargaining unit on or before August 28, 1951 shall be equivalent to his continuous service with the Company.

(b) Seniority for each employee who entered the bargaining unit subsequent to August 28, 1951 shall be measured from his date of entry in the unit.

(c) Seniority, as defined in (a) and (b) of this Section 2, shall be adjusted and/or lost on the same basis that continuous service is adjusted and/or lost, as covered in Article IX of this Agreement.

3. Employees will be given at least one week's notice and one week's work at the prevailing schedule before layoffs are made due to decreasing forces.

4. Subject to all of the provisions of this Article, the layoff procedure will be as follows:

A. When the number of employees in a classification under an immediate supervisor is affected by lack of work, the employees with the least seniority in that classification will be given at least one week's notice of transfer or removal.

B. When a reduction of forces is to be made, advance notice will be given to the Union together with the reasons for the change.

C. The Company will attempt to transfer the affected employees from slack to busier Departments on other work in the unit as quickly as possible. It is the intent of the Company to make every reasonable effort to so transfer employees during the notice period. However, if the necessary re-arrangements of personnel cannot be made during the notice period, the employees may be removed from the payroll for lack of work until the necessary re-arrangements can be made.

D. Each employee affected by lack of work with more than six months' service credits will be considered for transfer or removal, as follows:

(1) He may be moved to an open comparable (equal job rate and similar work) job in his Department (as defined below), or if there is no open comparable job in his Department, to an open comparable job in the Plant.

(2) If there is no open comparable job in his Department or in the Plant, he may transfer to a comparable job in his Department by displacing the employee with the least seniority in that clasification in the Department.

(3) If the employee cannot be transferred to a comparable job in his own Department, he will be referred to the Central Employment Office for placement on a Plant-wide basis. He may transfer on a Plant-wide basis by displacing the employee with the least seniority on a comparable job in the Plant.

(4) If the employee can only be offered work which is more than one step below his grade at the time of layoff, he may choose between work offered and a lack of work removal.

E. Each employee selected for dismissal or extended layoff will be advised personally of the reasons therefor. Such employee may, if he desires, have a steward present at the time the reasons are given.

F. The above procedure will apply to any employee displaced by the procedure.

G. The above provisions apply only to reduction in forces layoffs; not to temporary lack of work situations.

H. Under this procedure, each affected employee's steward will be given duplicate lists of the employees in his section and their seniority.

I. The Departments within the River Works, pursuant to the Layoff Procedure are, subject to revision because of business conditions or organization changes, as follows:

Aircraft Accessory Turbine Department
Lynn and Everett Foundries
Medium Steam Turbine,
Generator and Gear Department
Outdoor Lighting Department
Rectifier Department
Small Aircraft Engine Department
Synchronous and Specialty
Motor and Generator Department

5. Employees of the Company who were or are in what is now the bargaining unit, but who have been or may be transferred directly to drafting, engineering, or supervisory positions, may be returned to their former classifications in the bargaining unit in accordance with their seniority and the terms of Section 4 D of this Article. (It is understood that their seniority will continue to accumulate while assigned to such drafting, engineering, or supervisory positions.)

6. An employee may:

(a) Retire at his or her option as provided in the Company Pension Plan; or

(b) Be retired by the Company upon reaching the age for normal retirement as provided in the Company Pension Plan (age 65), whether or not such employee is a participant in the Plan.

ARTICLE XVIII

LISTS OF HIRINGS, LAYOFFS AND TRANSFERS

1. The Union will be given details on employees laid off for lack of work after notification has been given to the employees and similar information on re-engaged employees after they have been rehired.

The information will consist of the name, continuous service date, classification of the employee and the name of the supervisor. The supervisors will give to the stewards information on extended layoffs whenever possible one (1) week before the employee is laid off.

2. The Union will also be given lists of new employees after they have been engaged, their classification and their supervisor and the Union will also be given details on transfers which are made through the Personnel Department.

3. Following the upgrading of an employee, the Union will be given information consisting of the employee's name, his job classification (including grade) and his supervisor's name.

4. Following discharge of an employee, the Union will also be given information consisting of his name and date of the last day worked. Like information will be given to the Union on employees who quit, retire, may be transferred to jobs outside of the bargaining unit, or whose deaths may occur.

ARTICLE XIX

WORK ASSIGNMENT

Employees outside of the bargaining unit covered by this Agreement shall not normally be

assigned to, nor perform, work normally performed by employees in the bargaining unit.

ARTICLE XX

GOVERNMENT REQUIREMENTS

Nothing contained in this Agreement shall be deemed to impose upon either party the obligation to take any action, or refrain from taking any action, in violation of any existing or future law, or rule, regulation or directive issued by a government department or agency.

ARTICLE XXI

POSTING

The Company will provide bulletin boards to be used for the posting of Union notices pertaining to the Union. All notices shall be subject to the Manager's approval, and he will also arrange for posting.

ARTICLE XXII

NOTIFICATION AND PUBLICITY

1. The Union will be notified as soon as the supervisors are notified of any matter not covered by this Agreement but affecting employees generally and concerning which the Union is the certified bargaining representative.

2. On any grievance or other matter which has been negotiated between the Company and the Union, the Company will notify the Union of any decision or determination before it notifies the employees affected.

ARTICLE XXIII

FINANCIAL SUPPORT

The Company shall not give financial aid to or otherwise support any labor organization. This, however, shall not prevent both parties to this Agreement from cooperating and exchanging such information essential for the furtherance of agreeable relations.

ARTICLE XXIV

TRAVELING TIME AND EXPENSES

1. (a) Non-exempt employees traveling at the request and with the prior approval of the Company will receive payment at the rates applicable had they worked for all time spent in such travel; provided, however, that where transportation with sleeping accommodations is used, an additional one hour's pay at such rates for trip preparation shall be allowed, but no payment shall be made for traveling time between the hours of 6:00 P.M. and 6:00 A.M., or in excess of eight hours in any one day.

   (b) Exempt employees traveling at the request and with the prior approval of the Company will be paid according to the established policy for such employees. Under this established policy exempt salaried employees will be paid their regular salary while in such travel status without respect to the time involved. Under no circumstances will trip preparation time be allowed to such employees.

2. Reasonable expenses will be allowed for transportation, meals and hotels wherever necessary. Where travel is by automobile not owned by the Company, such transportation expense shall be at the rate of eight cents ($.08) per mile, provided use of such automobile has been specifically approved in advance by the Company.

3. Traveling time and expenses shall be itemized and submitted to Management for approval.

ARTICLE XXV

PLANT CLOSINGS — TERMINATION PAY

1. Whenever the Company decides to close a plant, any of the employees of which are covered by this Agreement, the Company shall give notice of its decision to the Union and the employees concerned. Thereafter, as the Company, in the course of such plant closing, no longer has need for the work then being done by an employee, his employment by the Company and all his rights under this Agreement may be terminated, subject only to compliance with the provisions of this Article.

2. Each employee shall be given at least one week's advance notice of the specific date of his termination.

3. An employee with continuity of service whose employment is terminated because of such plant closing, but who, after the announcement thereof, continues regularly at work for the Company until the specific date of his termination, shall if not eligible for optional retirement under the Pension Plan, be entitled to the following:

(a) The full vacation allowance for which he might have qualified during the calendar year in which his employment is specifically terminated, provided that such employee has not received his vacation allowance for such year prior to the time his employment is so terminated.

(b) Termination pay calculated as follows:

(i) One week's pay for each of the employee's full years of continuous service in excess of five such years.

(ii) One day's pay for each of the employee's first five full years of continuous service.

4. For the purposes of this Article, the following provisions shall be applicable:

(a) An employee who has received termination pay as provided in Section 2 (b) above, and who is re-employed by the Company as a "new" employee within one year after his termination, shall have his continuity of service restored upon repayment to the Company of the termination pay provided for in Section 2 (b).

(b) A "week's pay" for an employee shall be calculated by multiplying his average straight time hourly rate (obtained from the last available regular statistics) by five times the number of hours in his normal regular workday; a "day's pay" shall be calculated by multiplying such average straight time hourly rate by the normal hours of the employee's regular workday. A day's pay shall in no event exceed payment for eight hours, and a

week's pay shall in no event exceed payment for forty hours.

(c) The terms "close a plant" and "plant closing" mean the announcement and carrying out of a plan to terminate and discontinue all Company operations at any plant, service shop, or other facility covered by this Agreement without any then existing plan to carry on at such plant, service shop or facility any new operations of the Company. Such terms do not refer to the termination and discontinuance of only part of the Company's operations at any plant, service shop, or other facility, nor to tl termination or discontinuance of all of its former operations coupled with the announced intention to commence there either larger or smaller other operations.

5. The provisions of this Article shall not be applicable where the Company decides to close a plant because of the Company's inability to secure production, or carry on its operations, as a consequence of a strike, slowdown or other interference with or interruption with work participated in by employees in the plant, service shop or other facility involved.

ARTICLE XXVI

MANAGEMENT AUTHORITY

Subject only to any express limitations provided in this Agreement or in any other written agreement between the Company and the Union, the Company retains the exclusive right to manage its business including (but not limited to) the

right to determine the methods and means by which its operations are to be carried on, to direct the work force and to conduct its operations in a safe and effective manner.

This Article does not modify or limit the rights of the parties or of the employees under any other provisions of this Agreement or under any other written agreement between the Company and the Union, nor will it operate to deprive employees of any wage or other benefits to which they have been or will become entitled by virtue of an existing or future written agreement between the Company and the Union. Neither will this Article be used to limit or modify the rights of the Union to process grievances pursuant to Article XIV.

ARTICLE XXVII

EMPLOYMENT SECURITY

Notwithstanding any other provisions of this Agreement, upon written notice from the Union to the Company not more than sixty (60) days and not less than thirty (30) days prior to September 1, 1958, collective bargaining negotiations shall commence between the parties on September 1, 1958, for the purpose of considering proposals for contracting with regard to any questions directly relating to employment security which may be submitted by either the Union or the Company. If no agreement is reached thereon by October 1, 1958, the Union shall have the right to strike over such proposals, but the contract shall continue in effect as provided in Article XXIX. In the absence of mutual consent, neither the Company nor the Union shall be required to consider any matter covered by this Agreement, the 1955 Settle-

ment Agreement, the 1955 Wage Agreement, or the 1955 Pension and Insurance Agreement between the parties.

ARTICLE XXVIII

MODIFICATION

Not more than 60 days and not less than 30 days prior to the 1st day of October, 1960, and any anniversary date thereof, either party to this Agreement may present to the other notice of proposed modifications or additions to the provisions hereof. Within thirty (30) days after notice is given, collective bargaining negotiations shall commence for the purpose of considering such modifications or additions. Failing agreement on such proposed modifications or additions, the Union shall have the right to strike after giving 15 days' written notice to the Company, but the Agreement shall continue in effect as provided in Article XXIX.

ARTICLE XXIX

TERMINATION

This Agreement shall continue in full force and effect for the period from August 15, 1955, to October 1, 1960, and thereafter from year to year, unless not later than sixty (60) days prior to October 1, 1960, or October 1 of any year thereafter, either party notifies the other in writing of its intention to terminate the Agreement upon such October 1st.

EXHIBIT "A"

GENERAL ELECTRIC

Date .....

SS No. .....

ASSIGNMENT TO AND AUTHORIZATION TO DEDUCT AND PAY UNION DUES TO LOCAL NO. OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEER'S UNION AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR.

TO PAYMASTER:

I hereby cancel any authorization heretofore given to you to deduct my Union membership dues from my earnings.

For each month during which I work for the General ~~Electric~~ Company while this assignment is in effect, and while there is in effect an agreement between the Company and the American Federation of Technical Engineers' Union, AFL, I hereby assign, from my earnings now or hereafter payable to me from the Company, to Local No. of the American Federation of Technical Engineers' Union affiliated with the American Federation of Labor, my Union membership dues (as certified to the Company by the Local) and I hereby authorize and direct you to deduct such membership dues from my earnings and pay the same for my account to such Local. You are hereby authorized to deduct such membership dues from my earnings payable the first pay day of each month ~~but~~ if not so then deducted in any particular month, you are then authorized to make such deduction from my earnings payable in any subsequent month.

I reserve the right to revoke this authorization upon 30 days' written notice mailed to the Company. A copy of such notice will be mailed at the same time to the Local.

PAY NO. .....

Signature of Employee

ASSIGNMENT TO AND AUTHORIZATION TO DEDUCT AND PAY UNION INITIATION FEE TO LOCAL NO. OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS' UNION AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR.

I further hereby assign, from my earnings now or hereafter payable to me from the General Electric Company, to Local No. , of the American Federation of Technical Engineers' Union, affiliated with the American Federation of Labor, the sum of $ as my Union initiation fee and I hereby authorize and direct you to deduct such sum from my earnings and pay the same for my account to such Local. You are authorized to deduct such sum from my earnings payable the first pay day of the month immediately following the date of this assignment and authorization, but if not so then deducted you are authorized to make such deduction from my earnings payable in any subsequent month.

PAY NO. .....

.....
Signature of Employee

MEMORANDUM OF AGREEMENT CONCERNING PENSIONS AND INSURANCE

This Memorandum of Agreement entered into between the GENERAL ELECTRIC COMPANY (herein referred to as the "Company") and Local #149, American Federation of Technical Engineers, A. F. of L., (herein referred to as the "Union") shall be applicable to and binding upon the Company, the Union and employees represented by the Union (herein referred to as "employees represented by the Union") at the Company's River Works plant located in West Lynn, Massachusetts, and the Company's Everett plant located in Everett, Massachusetts. This Memorandum of Agreement shall remain in effect to and including the 1st day of October, 1960, and from year to year thereafter, unless not later than 60 days prior to such date or any anniversary thereof, either the Company or the Union shall notify the other in writing of its intention to termi-

nate this Agreement upon such date or anniversary date.

(1) The parties hereto having negotiated concerning the subject of pensions and insurance, it is agreed that during the term hereof, the Company and the Union each waive the right to require that the other bargain collectively concerning the subject of pensions and insurance, and agree that there shall be no strike in connection with such matters, upon the condition that:

(a) The Company shall make available to employees represented by the Union the General Electric Pension Plan, as amended in 1955, when and as such amended Plan is made available generally to other employees of the Company.

(b) The Company shall make available to employees represented by the Union a revised Insurance Plan providing life, accidental death or dismemberment, non-occupational weekly sickness and accident, and maternity benefits and a Comprehensive Medical Expense Plan when and as such revised Plan is made available generally to other employees of the Company in the State of Massachusetts. (It is the mutual understanding of the parties that the Company reserves the right to modify and amend the Insurance Plan as offered employees represented by the Union and employees of the Company generally, in the event that in any State there shall be in effect,

or applicable, any State or Federal law providing for the payment of benefits for non-occupational sickness and accident or hospitalization, or for other health or sickness benefits. It is also the mutual understanding of the parties that the Company may, but is not obligated to, give employees represented by the Union the option, at times and upon conditions to be determined by the Company, to be covered under the revised Insurance Plan by a Standard Hospital-Surgical Plan with Extended Medical Expense Benefits rather than the Comprehensive Medical Expense Plan above referred to.

(2) The amended Pension Plan and revised Insurance Plan above referred to will be made available to employees represented by the Union at the same time such Plans are made available to Company employees generally, or as promptly thereafter as possible. It is the intention of the Company to place these Plans in effect as soon as possible, subject to prior compliance with various legal requirements, with the amended Pension Plan to be made effective as of August 15, 1955, and the revised Insurance Plan to be placed in effect as of November 1, 1955.

(3) The changes which will be made in the Pension Plan and the Insurance Plan have been described in general terms in written material presented to the Union on August 12, 1955, and the definitive statements of the amended terms and

conditions of the Plans will be provided to the Union as soon as available.

IN WITNESS WHEREOF, the parties hereto have caused their names to be subscribed to this Agreement by their respective duly authorized officers and representatives this 1st day of November, 1955.

LOCAL #149, AMERICAN FEDERATION OF TECHNICAL ENGINEERS (AFL)

John A. McCarthy
William J. Blais
Warren R. Eisener
Norman A. Clarke
Henry A. Devaney

GENERAL ELECTRIC COMPANY

R. A. Farrell
R. M. Holland
C. Brown, Jr.
A. E. Ringenwald
F. W. Fessenden

OBSERVED HOLIDAYS AT RIVER WORKS

New Year's Day
Washington's Birthday
Patriot's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Election Day
Veterans Day
Thanksgiving Day
Christmas

MOTION TO DISMISS

Defendant moves the Court to dismiss the action on the ground that the Court lacks jurisdiction of the subject matter because

(a) the Court would not, save for the alleged arbitration agreement between the parties, have jurisdiction under Title 28 of the United States Code, as is required by Section 4 of the United States Arbitration Act. 68 Stat. 1233, 9 U.S.C. §4;

(b) the collective bargaining contract between the parties is a "contract of employment" of the type expressly excluded from the operation of the United States Arbitration Act by Section 1 of said Act. 61 Stat. 669, 9 U.S.C. §1;

(c) this action does not relate to an arbitration provision in "any maritime transaction" or "contract evidencing a transaction involving commerce," as is required by Section 2 of the United States Arbitration Act. 61 Stat. 669, 9 U.S.C. §2;

(d) the Court, under Section 301 of the Labor Management Relations Act, 1947, (61 Stat. 156, 29 U.S.C. §185) does not have jurisdiction of an action which seeks purely equitable relief.

(s) WARREN F. FARR
Attorney for Defendant
ROPES, GRAY, BEST, COOLIDGE & RUGG
50 Federal Street
Boston 10, Massachusetts

MEMORANDUM

November 30, 1956

SWEENEY, CH. J. The petitioner brings this action under the Arbitration Act 9 U.S.C.A. §4 and the Labor-Management Relations Act of 1947, 29 U.S.C.A. §185 under which this court has jurisdiction without respect to the amount

in controversy or diversity of citizenship. The facts in the case by agreement of counsel must be taken entirely from the petition as no responsive pleading except a motion to dismiss has been filed. No hearing has been held on the motion to dismiss.

The company is an industry affecting commerce as defined in the Labor-Management Relations Act of 1947.

On or about November 1, 1955, the Union and the Company entered into a written bargaining agreement, (hereinafter referred to as the "Contract") which was to be effective and in force from August 15, 1955 to October 1, 1960.

On or about November 7, 1955, the Union filed grievances with the Company alleging that the jobs performed by employees, Paul Nolan, Fred Lang, Robert Tivey and Ashley Corporon were incorrectly graded. The Union alleged that under the grades established by the Company and set forth in Article VII of the contract, the duties performed by these employees came within Grade 13 and that the Company had not properly applied the contract in its payments to said employees.

After the grievance procedure set forth in article XIV of the contract had been exhausted, the Union on April 23, 1956 requested a meeting with the Company for the purpose of selecting an arbitrator and instituting arbitration proceedings pursuant to Article XV, Section 1, of the contract. The Company on May 1, 1956 notified the Union that it would not submit said grievances to arbitration.

The reading of Section 1 of Article XV of the contract between the parties is as follows:

> 1. Any grievance which involves the interpretation or application of this Agreement, and which remains unsettled after having been fully processed pursuant to the provisions of Article XIV shall be submitted to arbitration upon request of either the Union or the

Company provided such request is made within 90 days after the decision of the Company has been given to the Union pursuant to Article XIV. In each case, the arbitrator shall be selected and the arbitration proceeding conducted pursuant to procedures mutually satisfactory to the Company and the Union.

The plaintiff stands on the proposition that this Section compels the Company to arbitrate a situation such as the grading of employees. Section 2 of Article XV provides limitations upon the authority of an arbitrator to arbitrate certain of the actions between the parties. That Section reads as follows:

2. The award of an arbitrator so selected upon any grievance so submitted to him shall be final and binding upon all parties to this Agreement. The arbitrator shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement. In addition, it is specifically agreed that no arbitrator shall have the authority to establish a wage rate or job classification, ~~or~~ authority to enter an award pertaining to Article XIX, and that no provision of this Agreement or other agreements between the parties shall be subject to arbitration pertaining in any way to the establishment, administration, interpretation or application of Insurance or Pension Plans in which employees covered by this Agreement are eligible to participate.

It seems to me that the condition in this Section, "It is specifically agreed that no arbitrator shall have the authority to establish a wage rate or job classification . . ." places a distinct limitation upon the arbitrator that covers the situation in hand.

Apparently the jobs performed by the employees in question were newly created jobs, and since the contract makes no provision for the Union to be heard on the question of

such grading, it seems to me that the question of grading these positions is not open to arbitration.

From the foregoing I conclude and rule that the petition for an order to compel arbitration must be and is dismissed.

JUDGMENT OF DISMISSAL

SWEENEY, CH. J. After hearing and in accordance with the Memorandum of the Court handed down on November 30, 1956, it is hereby

ORDERED Petition for an order to compel arbitration be and it hereby is dismissed with costs taxed at $

By the Court,
(s) HELEN I. TWEEDY
Deputy Clerk.

December 3, 1956.
(s) GEO. C. SWEENEY
Chief Judge, U. S. District Court.
Entered December 3, 1956.
JOHN A. CANAVAN, *Clerk.*
by (s) HELEN I. TWEEDY, *Deputy Clerk.*

NOTICE OF APPEAL

Notice is hereby given that Local 149 of the American Federation of Technical Engineers, AFL, Plaintiff above named, hereby appeals to the United States Court of Appeals of the First Circuit, from the order of the Court dismissing the above named plaintiff's petition to compel arbitration entered into this action on the third day of December, 1956.

(s) ROBERT M. SEGAL
(s) ARTHUR J. FLAMM
Attorneys for the Plaintiff

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JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 858

LOCAL NO. 149 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO,

PETITIONER,

v.

GENERAL ELECTRIC COMPANY,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

HERBERT S. THATCHER,
JAMES F. CARROLL,
1009 Tower Building,
Washington 5, D. C.
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No.....

LOCAL NO. 149 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO,

PETITIONER,

v.

GENERAL ELECTRIC COMPANY,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered in the above entitled case on December 16, 1957.

OPINION BELOW

The Opinion of the District Court is reported in 157 F. Supp. 270 and is reprinted in the Record herein commencing R. 7. The Opinion of the Court of Appeals is reprinted in the Record herein commencing at R. 13, is reported at 250 F.2d 922, and is attached hereto as Appendix "A".

JURISDICTION

The judgment of the Court of Appeals was entered on December 16, 1957 (R. 28).

The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

QUESTION PRESENTED

Whether in suits under Section 301 of the Labor-Management Relations Act for specific performance of agreements to arbitrate, the federal courts, under applicable federal substantive law or policy in the labor-management field, are required to permit the arbitrator rather than the courts to determine a question of arbitrability in the first instance in cases where particular grievances or disputes have not been expressly or clearly removed from arbitration by the collective bargaining agreement.

STATUTES INVOLVED

Section 301 of the Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. Sec. 185, provides as follows:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States, having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."
>
> "(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any

such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets."

STATEMENT

This action is brought under Section 301 of the Labor-Management Relations Act, 1947, 29 U.S.C.A., Sec. 185, to compel arbitration pursuant to the term of a collective bargaining contract.

Petitioner is a local labor union and is the recognized collective bargaining representative of certain classes of Respondent's employees employed at Respondent's plants in Lynn and Everett, Massachusetts. Respondent is a New York corporation engaged in manufacturing various products at the above-mentioned plants (R. 2-3).

Petitioner and Respondent entered into a written collective bargaining agreement on November 1, 1955, for a term of five years, commencing on August 15, 1955 (R. 6). That agreement sets forth in Article VII thereof a schedule of job grades and wage rates (R. 6), but the job grades were merely listed by number, and the schedule thereof did not contain detailed job specifications for each grade. However, presumably the company had its own detailed job specifications for each of such grades (see Article VII, Section 4 of the Agreement (R. 6) and company's brief in the Court of Appeals, pp. 18-19), although such specifications were not expressly incorporataed in the collective agreement. In addition, the agreement further provided in Article XV, Sections 1 and 2 (R. 6) that:

"Sec. 1. Any *grievance* which involves the interpretation or application of this Agreement, and which remains unsettled *after having been fully processed pursuant to the provisions of Article XIV* shall be submitted to arbitration . . . " (Emphasis supplied.)

"Sec. 2. The award of an arbitrator so selected upon any grievance so submitted to him shall be final and binding upon all parties to this Agreement. The arbitrator shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement. In addition, it is specifically agreed that no arbitrator shall have the authority to establish a wage rate or job classification, or authority to enter an award pertaining to Article XIX . . ."

Petitioner on November 7, 1955, filed a grievance on behalf of four employees alleging that they had been incorrectly compensated, inasmuch as the duties performed by them required that they be included under and compensated at the wage rates established for Grade 13. The grievances were filed and processed in conformity with the contract, and when settlement was not reached, a request for arbitration was made pursuant to Article XV, Section 1 (R. 6). Respondent refused to submit either the question of arbitration of the grievance or the grievance thereunder to arbitration, its contention being that the grievance was not subject to arbitration (R. 8).

Petitioner filed suit in the United States District Court for the District of Massachusetts on July 30, 1956, seeking an order directing the Respondent to arbitrate the grievance. Following the Respondent's Motion to Dismiss, the District Court dismissed Petitioner's suit for specific performance on the ground that Petitioner, in substance was attempting to estab-

lish a wage rate or job classification, which subject, under Section 2 of Article XV, had specifically been taken out of the area of arbitration.

From such Order of the District Court the petitioner union appealed to the United States Court of Appeals for the First Circuit (R. 10). That court, after hearing arguments of counsel, affirmed the judgment of the District Court in written opinion (R. 13-15) 250 F.2d 922, Appendix "A" herein.

The Opinion of the Court of Appeals, in denying Petitioner the relief sought, rejected the reasoning of the District Court that under Article XV, Section 2, the arbitrator had no right to establish a wage rate or job clasification for the reason, as stated by the Court of Appeals below:

> "The Union may well be correct in saying that this language, properly interpreted, was limited to forbidding the arbitrator to establish new job grades or wage rates, but was not intended to prevent the arbitrator from applying the established job grades and wage rates to existing jobs."

The Court, however, affirmed the judgment of the District Court on the different and separate ground that since no written detailed job specifications for the various Grades had been incorporated into the collective agreement, there was "no language in the collective agreement to be interpreted and applied for the purpose of determining whether the duties performed by any particular employee entitled him to be classified in any particular grade"; thus there was nothing which the arbitrator could interpret and no language which the arbitrator could apply, so that there was no agreement to arbitrate anything which the court could specifically order to be enforced. In so holding, the court determined that before it could

undertake to decree specific performance of a contract for arbitration, it

> "must necessarily first determine, as a matter of law, whether the alleged refusal to arbitrate is a violation of any term in the collective bargaining agreement. Hence, whether we look to the terms of the Arbitration Act, or whether we look exclusively to the terms of § 301(a), the issue of arbitrability under the collective bargaining agreement is inescapably an issue which the district court must determine for itself as a matter of interpretation of the terms of the arbitration article in the collective bargaining agreement."

REASONS FOR GRANTING THE WRIT

This case involves a question of vital import in the law applicable to the arbitrability of labor disputes under arbitration clauses in collective bargaining contracts as presently being developed in suits for specific performance of agreements to arbitrate under Section 301 of the Labor-Management Relations Act of 1947. That question is whether in the light of federal, as distinguished from state common law, policy in the field, should not the arbitrator, rather than the courts, undertake the determination of questions of arbitrability of particular grievances when the question of arbitrability is arguable and when arbitrability is not expressly or clearly excluded by the terms of the contract? This question has not been, but should be, determined by this Court if the role of arbitration, as a means of settling disputes in industries affecting commerce, is to be expanded rather than contracted. For many years in the past and under common law *(Cf. International Association of Machinists v. Cutler-Hammer, Inc.*, 297 N.Y. 519, 74 N.E. 2d 464 (1947)), the issue of whether the arbitrator or the courts are to initially

determine the question of arbitrability of particular grievances in situations where the agreement to arbitrate itself is not clear on the question has been a particularly vexatious one. See address by Professor Archibald Cox of Harvard Law School, entitled "Current Problems in The Law of Grievance Arbitration" made at the University of Cincinnati Conference on Labor Arbitration, November 14, 1957 (referred to by the court below (I.R. 19)*), where the entire subject is discussed at length. Since the determination of this Court in *Textile Workers Union of America v. Lincoln Mills of Alabama*, 353 U.S. 448, and *General Electric Co. v. U.E.*, 353 U.S. 547, the federal courts find themselves in the position of fashioning substantive federal law applicable to the enforcement of collective agreements to arbitrate in the areas covered by the Taft-Hartley Act. Under the weight of authority at common law the courts undertook for themselves the initial determination of arbitrability when the arbitration agreement itself, as the agreement in this case, was ambiguous on the subject, and this was done even though the agreement did not specifically exclude the particular grievance from arbitration. In so doing, the courts reasoned that in order to decree specific performance, a specific undertaking to arbitrate the particular grievance must be found in the four corners of the agreement to arbitrate, and if such a specific undertaking could not be found, the courts could not decree enforcement.

This approach has operated to limit rather than expand the scope of operation of arbitration agreements, and, even worse, to cause the courts to intrude on the merits in an effort to determine the "speciousness" of assertions that a particular grievance had been submitted to the arbitral process by the parties. If legal concepts applicable to the interpretation of

* To appear in 30 Rocky Mountain Law Review at 246

commercial agreements, or even the common law concept as set forth in *Cutler-Hammer, supra,* are to be strictly applied, as did the court below, then it will often happen that the disputes over many matters, which the whole course of conduct between the parties contemplated should not be withdrawn from arbitration, would be removed, with resulting disruptions to production if, as in the present case, strikes are permitted over such non-arbitrable disputes. On the other hand, if in doubtful cases the arbitrator is permitted the right of initial determination of arbitrability, his ability to take into account factors other than the bare and often indecisive language of the arbitration agreement itself would serve to promote and not obstruct the process of arbitration. For the arbitrator has open to him not only the precise language of the contract, but also the background and continuing relationship of the parties, the past history in making and applying the terms of the agreement, and past industrial practices in the plant in similar or related situations. The arbitrator's frame of reference in applying a collective bargaining agreement is fundamentally different from the position of a court considering an ordinary legal document. A collective bargaining agreement is not an ordinary legal document like a commercial contract. As stated in a yet unpublished article by the late Professor Harry Shulman of Yale, "The Role of Arbitration in the Collective Bargaining Process:"

> "It is not the 'typical' offer and acceptance which normally is the basis for classroom or text discussions of contract law. It is not an undertaking to produce a specific result; indeed, it rarely speaks of the ultimate product. It is not made by parties who seek each other out to make a bargain from scratch and then go his own way.

"The parties to a collective agreement start in a going enterprise with a store of amorphous mehods, attitudes, fears and problems. Though cast in an adversary position, both are dependent upon their common enterprise . . .

"They meet in their contract negotiations to fix the terms and conditions of their collaboration in the future. But the resulting collective agreement covers only a small part of their joint concern. It is based on a mass of unstated assumptions and practices as to which the understanding of the parties may actually differ, and which it is wholly impractical to list in the agreement. It is similarly impractical, if not impossible, to anticipate and guard against all possible future contingencies . . ."

Because of the foregoing factors, it is submitted that the court below erred in its strict common law, "look-in-the-dictionary" approach to the arbitration clause in the present case, when there was open to it, under *Lincoln Mills, supra*, the approach which the body of "federal labor law" indicates was more in keeping with the current federal attitude on the question. The bare terms of a collective contract may well fall short, as found by the court below, of expressing understandings implicit in the particular collective bargaining relationship evolved by the parties over the years; it is impossible for the parties to spell out, with any degree of preciseness, all of the issues or disputes which they desire to include or not to include within the scope of arbitration. Should this practical difficulty operate to preclude the union from submitting what are sometimes very important disputes to arbitration, particularly where, as here, the failure to

submit to arbitration can result in strike action* and the consequent disruption of production which it is paramount purpose of the Taft-Hartley Act to prevent?

The arbitration clause in the present case is a typical one, calling for the arbitration of "any grievance which ivolves the interpretation or application of this Agreement." Taken on their face, these words would appear broad enough to cover any dispute involving the scope of the arbitration clause which is, itself, a provision of the agreement, or to cover the question of whether, in the "application" of the agreement, the work of particular individuals fall into the grade and wage scale set forth in the agreement. At the very least, it is clear that this typical arbitration clause covers without limitation *all* disputes concerning interpretation or application of the collective agreement. The words are not restricted to disputes which are meritorious or even to disputes which are "clearly" arbitrable.

The union petitioner in this case has not asked the court to which it applied for relief to determine the merits of its contention that incorporating a specific grade and wage scale into the contract implies a promise to fit the work of particular individuals equitably into the established structure. That is for the arbitrator to determine, based on many circumstances going beyond the four corners of the contract. Since there is nothing in the contract which expressly precludes the submission of this question to the arbitrator, or which even clearly implies that the question cannot be considered one involving either the application or

---

* The no-strike clause in the present case is applicable only in respect to disputes over grievances which can be resolved by arbitration; in respect to all other disputes the union is free to strike (see R. 6, Exhibit "A", p. 28).

the interpretation of the agreement, the policy more consistent with the present federal attitude would appear to be to permit the arbitrator to decide the issue of arbitration in the first instance rather than the court. For how can any court, at its remote distance from the controversy, determine with any positiveness whether the establishment of numerical job grades with an hourly rate for each was intended to reserve for the company a free hand in classifying jobs or, on the other hand, to incorporate classifications either recognized in plant practice or established in the company's own records, in which event a promise to correct errors in the existing classification and to keep jobs classified equitably could fairly be implied? It is submitted that it is the very purpose of the arbitration agreement to provide a means of settling this type of dispute by the broader and more liberal process of arbitration rather than by narrow concepts of contract law.

The policy of initial determination by the judiciary adopted by the court below inevitably leads to judicial intrusion into the merits—a policy widely condemned among experienced arbitrators and expressly rejected by the National Conference of Commissioners on Uniform State Laws in drafting a Uniform Arbitration Act. See Cox article, *supra*. Under the decision of this Court in *Lincoln Mills* and *General Electric, supra*, the federal courts are now required to fashion a body of substantive law derived from, among other factors, the policy of our national labor laws. In enacting Section 301, "Congress adopted a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common law rule" (*Lincoln Mills*, 353 U.S. at 456). Further,

> "Section 8 for the Norris-LaGuardia Act does, indeed, indicate a congressional policy toward

> settlement of labor disputes by arbitration, for it denies injunctive relief to any person who has failed to make 'every reasonable effort' to settle the dispute by negotiation, mediation or 'voluntary arbitration'." (*Lincoln Mills*, 353 U.S. at 457.)

Finally, the whole thrust of the Labor-Management Relations Act of 1947 is towards the peaceful settlement of labor disputes through the process of collective bargaining, to the ultimate end of preserving industrial peace and preventing interruptions to the flow of interstate commerce. With these considerations of federal policy in mind, it is submitted that the court below should have approached the question presented to it in a way which would save and not destroy the arbitration process, and should have permitted the arbitrator to determine the question of whether the grievance was one arbitrable under the contract, subject, however, to the right of the court to review such determination. Excessive judicial intervention can only restrict the growth of the arbitration process. As stated by the Third Circuit in *Donahue* v. *Susquehanna Collieries Co.*, 138 F.2d 3,

> "... We should not choke the arbitration process which has been given Congressional approval by the fetters of earlier judicial conceptions."

CONCLUSION

It is respectfully submitted that, for the reasons above stated, this Petition for A Writ of Certiorari should be granted.

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Counsel for Petitioner.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 5201

LOCAL NO. 149 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL-CIO,
PLAINTIFF, APPELLANT,

v.

GENERAL ELECTRIC COMPANY,
DEFENDANT, APPELLE.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before MAGRUDER, *Chief Judge*, and WOODBURY and HARTIGAN, *Circuit Judges*.

Arthur J. Flamm, with whom *Robert M. Segal* was on brief, for appellant.

Warren F. Farr, with whom *Lane McGovern* and *Ropes, Gray, Best, Coolidge & Rugg* were on brief, for appellee.

OPINION OF THE COURT

December 16, 1957.

MAGRUDER, *Chief Judge*. We have been much perplexed by this case, involving § 301(a) of the Labor Management Relations Act of 1947 (61 Stat. 156).

Appellant Union filed a petition under the United States Arbitration Act, as amended (43 Stat. 883, 61 Stat. 669, 68 Stat. 1233), and under § 301 of the Labor Management Relations Act (61 Stat. 156), seeking a decree of specific performance to compel the employer to perform an agreement to arbitrate, as provided in a collective bargaining agreement executed on November 1, 1955, to be operative for a term of five years, with an automatic renewal provision thereafter from year to year.

An understanding of the controversy here requires an examination of several articles of the collective bargaining agrement.

Article VII, entitled "Wage Rates," contains the following provisions:

". . .

2. Job classifications, job rates and step rates are as shown on Exhibit 'B'.

. . .

4. When an employee is hired or transferred through the Company Personnel Department and assigned to a job within the bargaining unit, he will be given a card showing his job classification, starting rate, job rate, and rate of progression, if any, applicable to the job for which he is hired or to which transferred. In addition, the employee's new supervisor will explain the general scope of his duties and responsibilities on the new job. Similarly, the employee will be given such information when re-assigned to another job within the bargaining unit.

5. (a) Rates paid will be on steps. Job rates will be designated by grade.

(b) The minimum starting rate for an inex-

perienced employee will be three steps below the Grade 9 job rate.

(c) Employees will progress on steps, from the starting rate to the Grade 9 job rate, as follows:

6 months after hiring—increase one step.

After each additional 6 months—increase one step.

(d) An employee who is receiving the Grade 9 job rate and is assigned to a Grade 11 job, or higher, will be given a one step increase at the end of 6 months dating from assignment to such Grade 11 or higher job.

(e) Any further increase in rate, up to the job rate for his job, shall be based solely on the employee's performance on the job.

(f) Subject to the foregoing provisions of this Section 5, the job rate shall be paid for normal performance.

EXHIBIT 'B'

Job Rates and Progressive Step Rates

Grade	8-15-55	9-15-56	9-15-57	9-15-58	9-15-59
14	$130.13	$134.03	$138.05	$142.85	$147.79
13	120.27	123.88	127.60	132.03	136.60
12	110.93	114.25	117.68	121.77	125.99
11	102.58	105.65	108.82	112.61	116.50
10	93.56	96.37	99.26	102.71	106.27
9	86.55	89.15	91.82	95.01	98.30
	79.78	82.17	84.63	87.58	90.61
	74.99	77.24	79.56	82.32	85.17
	70.92	73.04	75.23	77.85	80.54"

It will be observed that this so-called Exhibit "B" in Art. VII contains no detailed job specifications setting forth the types of duties falling into grades 14, 13, etc. There is no language in the collective bargaining agreement to be interpreted and applied for the purpose of determining whether the duties performed by a particular employee entitle him to be classified in any particular "grade," carrying with it a corresponding wage rate.

Article XIV, entitled "Grievance Procedure," established a conventional three-step procedure for adjustment of employee grievances between the Union and the Company, by which negotiation was to continue at progressively higher levels if an agreement was not reached.

Article XV, entitled "Arbitration," read in full as follows:

> "1. Any grievance which involves the interpretation or application of this Agreement, and which remains unsettled after having been fully processed pursuant to the provisions of Article XIV shall be submitted to arbitration upon request of either the Union or the Company provided such request is made within 90 days after the decision of the Company has been given to the Union pursuant to Article XIV. In each case, the arbitrator shall be selected and the arbitration proceeding conducted pursuant to procedures mutually satisfactory to the Company and the Union.
>
> 2. The award of an arbitrator so selected upon any grievance so submitted to him shall be final and binding upon all parties to this Agreement. The arbitrator shall have no authority to add to, detract from, or in any way alter the provisions of this Agreement. In addition, it is specifically agreed that no arbitrator shall have the authority

to establish a wage rate or job classification, or authority to enter an award pertaining to Article XIX, and that no provision of this Agreement or other agreements between the parties shall be subject to arbitration pertaining in any way to the establishment, administration, interpretation or application of Insurance or Pension Plans in which employees covered by this Agreement are eligible to participate."

Article XXVI, entitled "Management Authority," contains provisions which might perhaps be deemed to have added little or nothing to what would otherwise be implied from the other terms of the collective bargaining agreement. The article is as follows:

"Subject only eq. to any express limitations provided in this Agreement or in any other written agreement between the Company and the Union, the Company retains the exclusive right to manage its business including (but not limited to) the right to determine the methods and means by which its operations are to be carried on, to direct the work force and to conduct its operations in a safe and effective manner.

This Article does not modify or limit the rights of the parties or of the employees under any other provisions of this Agreement or under any other written agreement between the Company and the Union, nor will it operate to deprive employees of any wage or other benefits to which they have been or will become entitled by virtue of an existing or future written agreement between the Company and the Union. Neither will this Article be used to limit or modify the rights of the Union to process grievances pursuant to Article XIV."

The petition filed by the Union in the present case,

after numerous formal allegations, set forth the following:

> "On or about November 7, 1955, the Union filed grievances with the Company alleging that the jobs performed by employees, Paul Nolan, Fred Lang, Robert Tivey and Ashley Corporon were incorrectly graded. The Union alleged that under the grades established by the Company and set forth in Article VII of the contract, the duties performed by these employees came within Grade 13 and that the Company had not properly applied the contract in its payments to said employees."

The petition went on to allege that these grievances had been processed in accordance with the procedures set forth in Art. XIV of the contract; that after such grievance procedure had been exhausted without coming to any agreement, the Union on April 23, 1956, requested the Company to proceed with an arbitration pursuant to § 1 of Art. XV of the contract; that the Company on May 1, 1956, notified the Union that it would not submit said grievances to arbitration and had continually thereafter adhered to its refusal to arbitrate; that the Company's refusal to arbitrate, as aforesaid, "was and is a violation and breach of the collective bargaining agreement between the Union and the Company."

The prayer of the petition was that the Company "be specifically ordered to perform its agreement to arbitrate by submitting to arbitration the grievances involving Paul Nolan, Fred Lang, Robert Tivey and Ashley Corporon."

The district court, on December 3, 1956, after a hearing entered a judgment dismissing the petition for an order to compel arbitration.

In an accompanying memorandum the district court, referring to the provision in § 2 of Art. XV, said the following:

> "It seems to me that the condition in this Section, 'It is specifically agreed that no arbitrator shall have the authority to establish a wage rate or job classification . . .' places a distinct limitation upon the arbitrator that covers the situation in hand.
>
> Apparently the jobs performed by the employees in question were newly created jobs, and since the contract makes no provision for the Union to be heard on the question of such grading, it seems to me that the question of grading these positions is not open to arbitration.
>
> From the foregoing I conclude and rule that the petition for an order to compel arbitration must be and is dismissed."

On this appeal by the Union from the judgment dismissing its petition, we are constrained to affirm the judgment of the district court.

We are aware of a viewpoint urged in responsible quarters that the interests of effective labor arbitration would best be served by committing to the arbitrator in the first instance the question of arbitrability, that is, the question whether there is any issue to be arbitrated under the collective bargaining agreement. It is said that a collective bargaining contract is a very special type of document, in respect of interpretation, as to which an arbitrator has certain advantages over a court; that a collective bargaining agreement, though embracing a multitude of terms covering numerous employees working at various tasks, cannot be expected to have pin-pointed each of many problems to be dealt with in relations between the management and the

union; that the contract instead contains unexpressed assumptions that many procedures and practices will continue; that under the more simplified and speedy procedures of an arbitration, more evidence with regard to these unexpressed assumptions may be available, and an arbitrator may have the additional advantage of background knowledge derived from past experiences with the parties. Therefore it may be desirable in the first instance to have an arbitrator pass on the threshold question of arbitrability, instead of running the possible risk that a court, in the guise of ruling on this preliminary question of the jurisdiction of the arbitrator, may in effect make a ruling upon the merits of the asserted grievance. See Summers, "Judicial Review of Labor Arbitration or Alice Through the Looking Glass," 2 Buffalo L. Rev. 1 (1952); Cox, "Some Lawyers' Problems in Grievance Arbitration," 40 Minn. L. Rev. 41 (1955); Clifton, "Arbitration and Arbitrability," 3d Annual Conference on Labor N.Y.U. 187 (1950). See also *Greyhound Corp.* v. *Division 1384 of Amalgamated Association of Street, etc., Employees of America,* 44 Wash. 2d 808, 271 P.2d 689 (1954). See also an address by Professor Cox at the University of Cincinnati Conference on Labor Arbitration, November 14, 1957, entitled "Current Problems in the Law of Grievance Arbitration."

While not ignoring the force of these considerations, it seems to us that they would be persuasive not so much in a case like the present, but rather in inducing the parties to make a voluntary submission to arbitration, and in inducing the parties to include terms in a collective bargaining agreement giving wide scope to the questions to be submitted to arbitration.

But when one of the parties needs the aid of a court, and asks the court for a decree ordering specific performance of a contract to arbitrate, we think that the

court, before rendering such a decree, has the inescapable obligation to determine as a preliminary matter that the defendant has contracted to refer such issue to arbitration, and has broken this promise. The petitioning Union in the present case has indeed recognized this necessity, for the petition alleges that the refusal of the defendant Company to submit the stated grievance to arbitration constituted a breach of the Company's contract to arbitrate as contained in Art. XV of the collective bargaining agreement.

In our elaborate opinion in *Local 205, etc.* v. *General Electric Co.*, 233 F.2d 85, 101 (1956), we dealt with the foregoing matter as follows:

> "Arbitrability is a question which the district court must pas on in the first instance. By way of guidance, it may be appropriate to note here a brief comment on some general principles. The scope of an arbitration pledge is solely for the parties to set, and thus the determination of whether a particular dispute is arbitrable is a problem of contract interpretation. . . . However, an arbitration clause, either expressly or by broadly stating its scope to include disputed interpretations of any contract term, may refer the very question of arbitrability to the arbitrator for decision. That is, just as a court has jurisdiction to determine its own jurisdiction, the arbitrator in such a case has power to interpret the scope of the arbitration terms of the contract, including questions of whether the dispute at issue is made arbitrable therein and whether applicant has satisfied the contract procedures prerequisite to arbitration. . . . Thus the district court must first determine whether the contract in suit puts matters of arbitrability to the arbitrator or leaves them for decision by the court. If it is the latter,

> the court must decide such points before it can give relief under §§ 3 or 4 of the Arbitration Act. If it is the former, and the applicant's claim of arbitrability is not frivolous or patently baseless, an order can be given, with the decision on arbitrability to be made in the arbitration proceedings that follow, subject of course to §§ 10-11 of the Act."

See to the same effect *Davenport* v. *Proctor & Gamble Mfg. Co.*, 241 F.2d 511 (C.A. 2d, 1957); *International Union, United Automobile Aircraft, etc.* v. *Benton Harbor Malleable Industries*, 242 F.2d 536 (C.A. 6th, 1957); "Matters arbitrable under arbitration provisions of collective labor contract," 24 ALR(2d) 752, 766 (1952).

What we said in *Local 205* v. *General Electric Co.*, supra, was stated on the asumption that the provisions of the United States Arbitration Act were applicable to an agreement to arbitrate contained in a collective bargaining agreement. If that assumption is correct, it is pretty clear from the provisions of § 3 and § 4 of the Arbitration Act (61 Stat. 670-71) that the trial court, as a preliminary to giving the relief therein set forth, must necessarily determine as a matter of law whether there has been any contract agreement to submit the issue in question to an arbitration.

It is true that § 301 of the Labor Management Relations Act of 1947 can no longer be challenged on the score of unconstitutionality. *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448 (1957); *International Brotherhood, etc.* v. *W. L. Mead, Inc.*, 230 F.2d 576 (C.A. 1st, 1956). But despite the fact that the petitioning Union in the case at bar professed to base its petition on the United States Arbitration Act as well as on § 301 of the Labor Manage-

ment Relations Act of 1947, it may well be that we are not entitled to dispose of the present case by reliance upon any provision in the Arbitration Act. When *Local 205* v. *General Electric Co.* was before this court, we were troubled by "the hoary though probably misguided judge-made reluctance to give full effect to arbitration agreements". (233 F.2d at 96.) We therefore thought we were not justified in reading into the very general language of § 301(a) authority in a federal court to decree specific performance of an agreement to arbitrate unless we could find that the provisions of the United States Arbitration Act, by proper interpretation, were made applicable by the Congress to agreements to arbitrate contained in collective bargaining agreements. We suggested the following "practical grounds" in support of this conclusion:

> "A glance at a typical arbitration statute shows that it lays down procedural specifications for use of the new power to compel arbitration. Topics covered may include requisites of a submission, selection of an arbitrator, procedure and subpoena power for the arbitrator, stop and specific enforcement authority in a court, grounds and procedure for confirming or vacating an award. A court decision could overrule the common law bars to specific enforcement, but could not substitute for them the comprehensive and consistent scheme that legislative action could afford, and which is necessary for effective yet safeguarded arbitration." (Ibid.)

And so, after a full consideration of the terms and legislative history of the United States Arbitration Act (233 F.2d at 97-101), we came to the conclusion that though the Congress, in enacting the Arbitration Act, undoubtedly was focusing its attention on the field of commercial arbitration, it nevertheless had chosen

to enact a statute which was broad enough in terms to apply to collective bargaining agreements.

Our opinion also stated:

> "The case will therefore be remanded for further proceedings under the Arbitration Act. Since our decision makes clear for the first time in this circuit that that Act is applicable, the district court should now permit the parties to amend their pleadings so as to allege, respectively, compliance with the requisites of the Act and defenses afforded by it." (233 F.2d at 101)

Since the district court has dismissed the union's complaint for a decree of specific performance on what we held to be a mistaken view that the Norris-LaGuardia Act forbid the district court to grant the requested decree, we entered a judgment in the case vacating the district court's judgment of dismissal and remanding the case to that court for further proceedings not inconsistent with our opinion.

Certiorari was granted in this and other cases. The main opinion of the Supreme Court was in *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, 353 U.S. 448 (1957). In that case, without mentioning the Arbitration Act, the Supreme Court concluded that the general language in § 301 of the Labor Management Relations Act of 1947 was in and of itself sufficient authority to a federal district court to decree specific performance of an agreement to arbitrate. Only a brief opinion was written by the Supreme Court in *General Electric Co.* v. *Local 205* (353 U.S. 547), which the Court regarded as a companion case to *Textile Workers of America* v. *Lincoln Mills of Alabama*. Referring to our opinion in 233 F.2d 85, the Supreme Court said:

> "It first held that the Norris-LaGuardia Act did not bar enforcement of the arbitration agreement.

It then held that while § 301(a) of the Labor Management Relations Act of 1947 gave the District Court jurisdiction of the cause, it supplied no body of substantive law to enforce an arbitration agreement governing grievances. But it found such a basis in the United States Arbitration Act, which it held applicable to these collective bargaining agreements. It accordingly reversed the District Court judgment and remanded the cause to that court for further proceedings.

We affirm that judgment and remand the cause to the District Court. We follow in part a different path than the Court of Appeals, though we reach the same result. As indicated in our opinion in No. 211, *Textile Workers Union of America* v. *Lincoln Mills of Alabama*, supra, we think that § 301(a) furnishes a body of federal substantive law for the enforcement of collective bargaining agreements in industries in commerce or affecting commerce and that the Norris-LaGuardia Act does not bar the issuance of an injunction to enforce the obligation to arbitrate grievance disputes." (353 U.S. 547 at 548)

The Supreme Court sent down to us a certified copy of its judgment in the case, which judgment, under paragraph 3 of Rule 59, Revised Rules of the Supreme Court (346 U.S. 1009), served also as the Supreme Court's mandate to the district court. That judgment by the Supreme Court contained the following: "It is now here ordered and adjudged by this Court that the judgment of the said United States Court of Appeals, in this cause, be, and the same is hereby affirmed; and that this cause be, and the same is hereby, remanded to the United States District Court for the District of Massachusetts."

It may perhaps be surmised that if the Supreme

Court had agreed with our analysis as to the applicability of the Arbitration Act, it would have said so, for that conclusion would have rendered the case before the Supreme Court easier to decide. On the other hand, it is possible that the Supreme Court found the proper interpretation of the Arbitration Act a difficult question to decide, which it was justified in side-stepping as unnecessary to the disposition of the case, since, in its view, in any event the broad provisions of § 301(a) of the Labor Management Relations Act of 1947 were sufficient in and of themselves to authorize a federal district court to decree specific performance of an agreement to arbitrate.

The foregoing, of course, is pure speculation on our part. Perhaps it is a speculation in which we ought not to indulge, in the absence of an express ruling by the Supreme Court on the matter. Anyhow, though we are still convinced of the correctness of our ruling as to the applicability of the Arbitration Act, we think that in disposing of the present case we should, as an alternative ground, proceed on the assumption that the provisions of the Arbitration Act are by their terms inapplicable to collective bargaining agreements. We are unable to say whether, on that assumption, in fashioning the federal substantive law to be applied in suits under § 301(a), the Supreme Court would adopt, as a guiding analogy, the provisions of the United States Arbitration Act, as was done by Judge Wyzanski in *Textile Workers of America (CIO)* v. *American Thread Co.*, 113 F. Supp. 137 at 142 (D. Mass. 1953). However that may be, and focusing our attention exclusively on the language of § 301(a), it is obvious that the plaintiff, in a suit under § 301(a), has the burden of establishing that it is bringing suit for appropriate relief, legal or equitable, for violation of a term of a collective bargaining agreement; and that therefore the district court, before undertaking to

decree specific performance of a contract for arbitration, must necessarily first determine, as a matter of law, whether the alleged refusal to arbitrate is a violation of any term in the collective bargaining agreement. Hence, whether we look to the terms of the Arbitration Act, or whether we look exclusively to the terms of § 301(a), the issue arbitrability under the collective bargaining agreement is inescapably an issue which the district court must determine for itself as a matter of interpretation of the terms of the arbitration article in the collective bargaining agreement.

We find nothing in the terms of the carefully guarded arbitration agreement here to warrant the conclusion that the employer has agreed to arbitrate the question of the arbitrability of the grievance stated in the petition. We doubt whether the district court should have rested its dismissal upon the provision of § 2 of Art. XV that "it is specifically agreed that no arbitrator shall have the authority to establish a wage rate or job classification". The Union may well be correct in saying that this language, properly interpreted, was limited to forbidding the arbitrator to establish new job grades or wage rates, but was not intended to prevent the arbitrator from applying the established job grades and wage rates to existing jobs.

More fundamentally, what is submitted to arbitration is defined in § 1 of Art. XV as "Any grievance which involves the interpretation or application of this Agreement". As we have previously pointed out in this opinion, there is no language in the collective bargaining agreement to be interpreted and applied for the purpose of determining whether the duties performed by any particular employee entitle him to be classified in any particular grade. The provisions of Art. VII of the present collective bargaining agreement may perhaps be contrasted with the provision of

the collective bargaining agreement found in *Local 205 v. General Electric Co.*, supra, which, in Art. IX, contained the following, absent in the present case: "The Company shall furnish the Union, within 30 days after the signing of this Agreement, a complete list of job classifications and rate ranges." Under such an agreement, it may perhaps be argued that once the Company has supplied the Union with a list, as aforesaid, the terms of the job classifications and rate ranges become incorporated in the collective bargaining agreement by reference, and become binding on the Company, so that a dispute regarding whether the duties performed by a particular employee fall within the job description of the particular grade relates to "the application or interpretation of any provisions of this Agreement", the type of grievance which the Company agreed to arbitrate in Art. XIII of that collective bargaining agreement. In the case at bar, the collective bargaining agreement contains absolutely no language by way of job descriptions which could be interpreted or applied for the purpose of determining whether the duties performed by a particular employee fall within any particular grade.

A judgment will be entered affirming the judgment of the District Court.

PROCEEDINGS IN COURT OF APPEALS.

On the same day, December 16, 1957, the following judgment was entered:

JUDGMENT

December 16, 1957.

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration thereof, It is now here ordered, adjudged and decreed as follows: The judgment of the District Court is affirmed.

By the Court:
/s/ ROGER A. STINCHFIELD,
Clerk.

Thereafter, on January 2, 1958, mandate issued and the original papers were returned to the District Court.

Office - Supreme Court, U.S.
FILED
APR 16 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 858

LOCAL NO. 149 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS (AFL),

PETITIONER

v.

GENERAL ELECTRIC COMPANY,

RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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ARGUMENT

The sole reason advanced by the petitioner in support of its application for certiorari is that the case "involves a question of vital import in the law applicable to the arbitrability of labor disputes under arbitration clauses in collective bargaining contracts" (Pet. p. 6). We submit that no such important question of federal law is presented. The only issue before the Court below was whether under the terms of the particular collective bargaining agreement in question the specific grievances filed by the Union were subject to arbitration. The decision turned on the terms of the precise contract and the nature of the specific grievances in issue. No federal question of general

application is involved. And it is not, and could not be, claimed that the decision below conflicts with a decision of another court of appeals or with any decisions of this Court.

The grievances in question related to job evaluation *i.e.*, what the appropriate wage grade should be for four "newly created jobs" (R. 9). The Union claimed that the jobs, which had been classified by the Company as "Grade 12", should have been classified as "Grade 13". Whether the Union was entitled to an order compelling arbitration depended upon whether the Company had agreed to arbitrate such a grievance. Determination of that question necessarily involved a construction of the arbitration provision of the Agreement, which was limited to any fully processed grievance "which involves the interpretation or application of this Agreement".

The Court below recognized, as it had earlier in *Local 205* v. *General Electric Co.*, 233 F. 2d 85, 101 (1st Cir. 1956), *aff'd* 353 U.S. 547 (1957), that an arbitration provision in a collective bargaining agreement might be so drawn as to refer to arbitration the very question of arbitrability of a grievance. Accordingly, it first looked to the arbitration clause in question to find whether, expressly or by implication, it put matters of arbitrability to the arbitrator for decision. Finding "nothing in the terms of the carefully guarded arbitration agreement" leading to such a conclusion, it then considered whether the grievances in question were arbitrable as involving "interpretation or application of this Agreement". It concluded that they were not.

The court's construction of the arbitration clause in question as not referring issues of arbitrability to arbi-

tration is in accord with other decisions construing almost identical arbitration clauses in collective bargaining agreements. *International Union* v. *Benton Harbor Industries*, 242 F. 2d 536 (6th Cir. 1957); *Davenport* v. *Proctor & Gamble Mfg. Co.*, 241 F 2d 511 (2d Cir. 1957); *Philadelphia Marine Trade Assoc.* v. *International Longshoremen*, 382 Pa. 326, 115 A. 2d 733 (1955). And, absent a provision in the agreement for arbitrating the issue of arbitrability, federal courts have consistently passed on that issue themselves when asked to compel arbitration of grievances under a labor contract. See, *e.g.*, *Engineers Association* v. *Sperry Gyroscope Company*, 251 F. 2d 133 (2d Cir. 1957); *Signal-Stat Corporation* v. *Local 475, United Electrical, Radio & Machine Workers of America*, 235 F. 2d 298 (2d Cir. 1956), *cert. denied* 354 U.S. 911; *Markel Electrical Products, Inc.* v. *United Electrical, Radio & Machine Workers of America*, 202 F. 2d 435 (2d Cir. 1953); *United Electrical Radio & Machine Workers of America* v. *Miller Metal Products, Inc.*, 215 F. 2d 221 (4th Cir. 1954); *Textile Workers Union* v. *American Thread Co.*, 113 F. Supp. 137 (D. Mass. 1953); *Goodall-Sanford, Inc.* v. *United Textile Workers*, 233 F. 2d 104 (1st Cir. 1956); *aff'd* 353 U.S. 550; *Wilson Brothers* v. *Textile Workers Union*, 132 F. Supp. 163 (S.D.N.Y. 1954).

The petitioner seeks to have this Court create a new rule of law, that the trial court *must* refer the issue of arbitrability "in the first instance" to the arbitrator for determination unless the grievance in question is one specifically and clearly excluded from the arbitration clause. In other words, it would have this Court make a contract to arbitrate issues of arbitrability whether or not parties themselves have done so. The policy arguments it advances as to the advantages

allegedly to be derived from referring issues or arbitrability to the arbitrator, might be persuasive, as the court below observed (250 F. 2d 922, 927; Pet. p. 20), in inducing the parties to include terms in a collective bargaining agreement giving wide scope to the questions to be submitted to arbitration. But they furnish no warrant for rewriting the contract which was actually made by the parties. It might have been a good thing *if* the parties had made a different type of contract. Since they did not, courts cannot properly make new ones for them.

Despite its strictures against the "intrusion" of courts into the determination of questions of arbitrability, the petitioner itself, would apparently leave to the courts the ultimate determination of such questions. It urges merely that questions of arbitrability be determined by the arbitrator "in the first instance" (Pet., pp. 2, 11), "subject, however, to the right of the court to review such determination" (Pet., p. 12). The meaning of this suggestion is difficult to fathom. If courts are to review the merits of an arbitrator's decision on arbitrability, then reference to the arbitrator in the first instance would accomplish less than nothing. There would be *two* hearings on the same question instead of one, resulting in delays, and not a speeding up, of the arbitration process. Any such review would mean that "arbitration would fail of its chief purpose; instead of being a substitute for litigation, it would merely be the beginning of litigation" (*Coleman Company, Inc.* v. *International Union, United Automobile Aircraft and Agricultural Implement Workers of America*, 181 Kan. 969, — . 317 P. 2d 831, 837 (1957). See also *Burchell* v. *March*, 17 How. 344, 349 (1854)).

But manifestly there could be no effective judicial review of the arbitrator's determination of arbitra-

bility. In the absence of fraud or misconduct, his decision would necessarily be final. His determination that the issue was arbitrable, however unsound, would not be in excess of his jurisdiction because, by hypothesis, determination of the issue of his own jurisdiction would be committed to him. And the fact that his legal interpretation of the arbitration provision might be completely erroneous would not warrant judicial interference with his award, either under arbitration statutes or at common law. See *e.g., Wilko* v. *Swan*, 346 U.S. 427, 436-37 (1953); *Bernhardt* v. *Polygraphic Company of America, Inc.*, 350 U.S. 198, 203; *Richardson & Sons* v. *Hedges Transp. Corp.*, 98 F. 2d 55, 57 (2d Cir. 1938); *Mutual Health Benefit & Accident Ass'n* v. *United Casualty Co.*, 142 F. 2d 390, 393 (1st Cir. 1944); Sturges, Commercial Arbitration and Awards 798 (1930).

The conclusion of the Court below that the grievances in question did not involve the interpretation or application of the contract was plainly right. A labor agreement may define the methods to be followed in evaluating jobs for wage purposes or establish detailed job descriptions which can be applied in determining the applicable rate. Such provisions are not uncommon and they take a variety of forms. See *Cochran Foil Co.*, 26 L.A. 155, 157-158 (1956). But, as the Court below pointed out, the present contract contains no such provisions. Only by adding to the contract language which it does not contain — *i.e.* a description or definition of the jobs or duties encompassed in the various grades — could an arbitrator determine whether the duties performed by the employees in question were or were not those "encompassed in grade 13". This, however, an arbitrator is expressly forbidden to do under Article XV(2) of the Agreement, which denies

him any authority to add to or alter the provisions of the Agreement. See *Pacific Martime Assn. of Calif.*, 12 LA 1131 (1948).

Where, as here, the contract does not deal with the matter of how jobs are to be classified for wage rate purposes, either by defining the type of jobs or duties to which a given rate is applicable or by providing a method for evaluating and classifying jobs, labor arbitrators themselves have concluded that they could not resolve grievances as to the appropriate rate. The contract being silent on the problem, there was nothing for them to interpret or apply. See, *e.g.*, *Bliss & Laughlin, Inc.*, 11 LA 858 (1958); *Essem Packing Co., Inc.*, 7 LA 572 (1947); Baer Bros., 14 LA 487 (1950) Cf. *Chambersburg Engineering Co.*, 3 LA 254 (1946); *Kempsmith Machine Co.*, 5 LA 520 (1946).

In adopting the same approach, the court below did not manifest any stiff-necked, or "look-in-the-dictionary", attitude (Pet. p. 9). It fully recognized that under different collective agreements, as, for example, the one before this Court in *General Electric Company* v. *Local 205*, 353 U.S. 547 (1957), grievances as to the proper rate for jobs in a particular grade might well be arbitrable. All that it held was that the agreement here in question did not contain any language with respect to job descriptions and, therefore, there was nothing in the contract which could be "interpreted or applied" in determining whether the duties of a particular employee fell within any particular grade. That decision was right and fully in accord with decisions of labor arbitrators and other federal courts.

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted.

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